

DRUGS IN THE WORKPLACE- MANAGEMENT OPTIONS AND CONSIDERATIONS

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The Problem:

The dangerous drugs that cause problems for industry are divided into the following broad categories. These are alcohol, marijuana, stimulants, depressants, narcotics, hallucinogens, and inhalants.

In 1982 the Employment and Productivity Sub-Committee of the U.S. Senate Committee on Labor and Human Resources held a series of four hearings on United State's productivity performance. Testimony was heard from witnesses representing education, science, industry, high technology, labor and government. During those hearings, information surfaced that was serious enough to warrant holding a fifth hearing.

Seventy billion dollars down the drain. Think about it. According to the Sub-Committee's findings, seventy billion dollars is how much money American business loses annually because of alcohol and drug abuse by employees. Not possible? Consider---A business climate with decreased productivity, unmet quotas, absenteeism, tardiness, and couple that with an increase in security problems, accidents on the job, and destruction and theft of company property. Get the picture? It doesn't take a computer analyst from California, or a financial expert on Wall Street to spell it out for you. Pot, pills, powders and booze...sapping the strength and drive of America's work force. These impaired workers function at slightly more than half their normal capacity. With three million alcoholics in the United States and up to fifty-three million people using drugs occasionally, we are looking at almost sixty million workers performing at significantly less than their normal capacity daily.

Sub-Committee findings reveal that employees with a drinking or drug problem are absent sixteen times greater than the average employee, have an accident rate four times greater, use a third more sickness benefits, and have five times more compensation claims while on the job. So that's only part of the picture. Forty percent of on-the-job fatalities and forty-seven percent of on-the-job injuries can be traced to alcohol abuse. According to the U.S. Department of Commerce, between 1967 and 1981, America's manufacturing output advanced only thirty-nine percent. In the same period, Japan grew two hundred and nine percent, France ninety-eight percent, West Germany ninety percent. No developed

nation has a drug problem as serious as the United States. Japan, with the highest growth rate, has the lowest drug consumption rate.

The American Psychological Association reports marijuana is the principal substance used by ninety percent of drug abusing employees, amphetamines by thirty-four percent, barbiturates by twenty-one percent, and heroin by five percent. Some addicts abuse a combination of drugs. Drug use adversely affects behavior. It will severely hinder workplace performance, whether in a construction project, operating equipment, driving a truck or company vehicle, running a word processor, or dealing with a customer.

Illicit drugs are no longer the province of any particular age group, cast or nationality. The "junkie" with the golden arm could easily be your next door neighbor, your office pal or a member of your own family.

We must recognize that Drug Abuse is a clear and present danger and take measures to guard against it. This is especially true in an industry such as yours. The physical and mental pressures are enormous. Noise is a problem, so is isolation and boredom. The work is repetitive and backbreaking. At times, even the elements conspire to undermine the morale and productivity. There is no room for mistakes and no room for a person strung out on mind-altering drugs.

What To Do:

There are a number of options available to companies wanting to address the problem of drugs in the workplace. Initially a company must become aware of the moral and legal implications and must be adamant in their desire to see that rights of all parties concerned are protected while trying to alleviate drug and alcohol abuse in the workplace.

Educating employees is a necessary element in the solution process. It is necessary to educate employees on the company position concerning drugs and alcohol. Some companies develop programs designed to educate employees to the dangers of these chemical substances and to give employees instructions on "what to do" should they have knowledge of drug use in the work area. Training in Awareness, Recognition, Signs and Symptoms is very important, especially for supervisors and managers. Also special training should be provided to supervisors focusing on job performance, changes in employee behavior and fitness for duty. Some companies might choose to develop programs for assistance and rehabilitation for employees who have a drug or alcohol problem. The management/cost obstacle is one that has to be overcome. My answer to this is, "If you think education is expensive...try ignorance!"

In hiring, the screening and selection process of companies can be a very key area in which users and potential users can be spotted. Careful training of persons doing the screening is another essential element. They should know how to recognize the profile of chronic drug abusers.

An option used by many companies is just "to do nothing." I personally disagree with this philosophy and feel that it does not solve anything and that problems tend to compound if left unattended.

At the least, a company should have a simple policy addressing the use, possession and sale of drugs and alcohol on company property. A broader policy could be developed, after careful study, by upper management, to include the use of Searches, Laboratory Testing (urine/blood), Polygraph or Employee Assistance. Undercover investigations offer another alternative, but should not appear in published policy.

Before any active procedure is undertaken, the company should establish a clear policy that:

1. Defines its overall intent.
2. Specifies the items that are prohibited on company property.
3. States appropriate action to be taken in such cases as-- refusal to submit to a search; and discovery of prohibited items; etc.
4. Notifies employees and employees of contractors that searches, etc., may be made by authorized persons, without prior notice, of anyone on, entering, or leaving the company property.
5. Is posted and displayed at appropriate and conspicuous locations throughout the work area. The policy could be made a topic of safety or other employee meetings. In other words, it becomes a condition of employment. A condition for entry upon the property is the consent for search, giving a urine sample, etc.

Many companies broaden their policies to prohibit items from their property, other than drugs and alcohol, such as firearms, explosives, weapons, and drug paraphernalia. These policies have generally been referred to as "Contraband" or "Prohibited Items" policies.

The company's policy is not designed to carry out or enforce law but merely designed to promote a safe and productive workplace in compliance with the many State and Federal rules, regulations and statutes. Things prohibited in the workplace may, in fact, be quite legal outside the workplace. This is a common

misunderstanding as in the case of alcohol. When a person is off duty, they may, if they choose, drink alcohol at any number of alcoholic beverage outlets or in their own home. Once they come to work, they must be guided by the work rules which are designed to promote safety and productivity. Since it has been well established that drinking alcohol or taking any other mind altering drug has a direct impact on accidents, absenteeism, discipline, productivity, etc., an employer may limit or prohibit the use of alcohol on the job, on the company premises and in some special cases, off the job, if it can be shown to affect the job or position in some important way.

1. Searches:

Unannounced, periodic and nondiscriminatory searches may be performed by authorized representatives of management of all persons, personal property, lockers, baggage, vehicles, quarters, etc., located on company property. These searches may include the use of scent-trained dogs and third party consultant search teams.

The search program is based upon two very key elements--(a) Safety, and (b) Exclusion to the Fourth Amendment Right of Search and Seizure.

Your company is mandated to provide a "safe working environment" for its employees. Mind-altering chemicals in the workplace is not conducive to a "safe" environment. A private company, with an established policy, using other than law enforcement personnel to conduct said searches, falls within the exclusionary rule of the Fourth Amendment which applies to "unreasonable" searches performed by governmental agents.

Searches must be conducted for safety purposes under an established company policy with proper notification to those subject to search. The U.S. District Court in the Eastern District of Louisiana (Edmond Wells, J. vs. Ocean Drilling & Exploration Company, et al; Civil Action No. 78-1968, Section F(2), January, 1980) stated that "a search conducted by a private individual for purely private reasons does not fall within the protective ambit of the Fourth Amendment." It further stated that "Defendant's activity concerning Plaintiff was not law enforcement activity, but was directed toward the safety of the ODECO employees and property."

Under no circumstances should an employee be searched or detained forcibly by the company representatives conducting the search. This is a voluntary procedure and a management representative should always be present when the search is conducted. If an employee merely objects verbally to the search, the company policy should be explained. If the employee still cannot be convinced to consent to the search, none should be attempted. Company

guidelines should further explain that failure to consent to a search may subject the employee to disciplinary action as the person would be in violation of a company policy. Most companies have chosen not to file criminal charges and prosecute when mind-altering chemicals are discovered. Other options are mainly used such as termination, demotion, warnings, suspension without pay and enrollment in rehabilitation programs.

Documentations and the maintaining of clear, concise and up-to-date records is extremely important, especially where some form of punitive action has resulted from a search.

Overall, the search program has been very beneficial and has acted as a good deterrent to the use of drugs, alcohol, and other prohibited items on company property. However, it is still statistically reported that one out of nine persons searched in a work area (twelve percent of the workforce) in which the precautions have been implemented will be found with some form of contraband item--mainly drugs and drug-related items. Significantly, this percentage did not drop during the recent decline in industry when through mass layoffs companies retained their "better" employees.

Prior to setting up a search program your "corporate homework" must be complete. Your policy makers (management, attorneys, heads of safety, security, personnel, etc.) must agree on a consistent set of rules and insure that proper notice is disseminated. This viable program can quickly go astray if things are not handled and done in an ordinary manner.

2. Urinalysis:

Short of catching a person in the act of using drugs, urinalysis may be the next best method of identifying drug users. This method is gaining wider usage in private industry. Basically, industry is following the lead set forth by the military and its testing procedures.

The following are ways a urine test can be utilized in the employment and pre-employment processes:

- a) When given as a part of the pre-employment process, it can be of a great assistance in the hiring process of "weeding out" drug users. The applicant signs a consent form stating that he agrees to a urine test to determine the presence of drugs in his system. This form would state that if drugs are discovered his application might be rejected for further consideration. Also, should he refuse to submit to a drug screen, then this would

amount to a voluntary withdrawal of his employment application. Because of the numbers of persons being rejected because of drugs, many companies, to save expense, give the drug screen prior to a pre-employment physical.

- b) Periodic testing, as a search method. For information purposes this method has a lot of merit. Even, if a blind test were done where no punitive action was planned, management would have good knowledge as to the drugs usage in the workplace and specifically what drugs were being used. The company could choose to counsel those that have positive tests.
- c) Tests after accidents, such as personal injury, vehicle or equipment accidents, would provide the company valuable information and could ultimately provide good defense if litigation resulted therefrom.
- d) A drug screen could be incorporated as part of an annual physical or promotion process.
- e) Upon supervisor observation, an employee could be requested to take a drug screen. This could come about by the supervisor observing a change in behavior or job performance. Through proper training, the supervisor should be able to observe these changes. I personally feel that some safeguards, such as obtaining approval from a higher level, should be built into this procedure to keep a "witch hunt" from taking place. However, I do feel that this is a viable procedure as the supervisor is the front line "eyes and ears" of the company.
- f) After a leave of absence of thirty days or longer, excluding sick leave, your policy could require that person to take a drug screen upon his return.

Any urinalysis program should be coordinated through the company medical director, if one is available.

As in searching, the drug screen should be a voluntary procedure. Should a person refuse, then he would not be acting in accordance with policy and appropriate action could be taken. I strongly recommend that a consent form be signed prior to the taking of a sample.

A very important point to remember is that no urine test can determine whether the employee is presently impaired. The test only determines the presence of drugs in the urine. It is recommended that when test results are positive, there should be a second test made of the same urine sample using a different testing method, especially where a company plans to take punitive action. For most drugs a Gas Chromatograph/Mass Spectrometer (GC/MS) test, done at a qualified laboratory can be used.

Urinalysis test kits can be purchased with all the equipment needed to conduct the tests on-site. In-house staff members can be trained to use these test kits and equipment. However, due to false positive readings, mis-calibration of equipment and relatively untrained personnel to engage in difficult biochemical manipulations, I prefer to utilize a qualified laboratory to do both the initial and confirmation tests.

It is also extremely critical to establish a "Chain of Custody" in the taking and handling of urine samples. People's lives and careers are on the line. A misreported test could cause serious damage to both the person and the company. In litigation, the proof of a "chain of custody" will be essential.

The rationale of urine testing can be justified if a person is in a position of public trust, or where public safety is concerned, or if it is a business necessity that employees be fit for duty, unimpaired by drugs.

One common question asked is--How long after ingestion can a drug be detected in the urine? To answer this question the Syva Company compiled the following table, which is based on current scientific literature, and, in the case of cannabinoids, on clinical trials carried out by Syva. Since detection times may vary widely from person to person, the intervals listed in this table should be used only as general guidelines. Factors such as fluid intake, method and frequency of the drug's ingestion, the patient's physical condition, and the test method's sensitivity can all affect a drug's detection time in a particular individual.

DRUG	APPROXIMATE DETECTION TIME
Amphetamines	48 hours
Barbiturates	
Short-acting (e.g., secobarbital)	24 hours
Long-acting (e.g., phenobarbital)	2-3 weeks
Benzodiazepines (tranquilizers)	3 days for a single therapeutic dose of Valium
Cocaine Metabolite	2-4 days
Methadone	3 days
Opiates	2 days
Propoxyphene	6-48 hours
Cannabinoids	
Moderate smoker (4 times/week)	5 days
Heavy smoker (smoking daily)	10 days
Very chronic smoker	20 days or more
Methaqualone	2 weeks
Phencyclidine	8 days

3. Blood Test:

Many companies have established blood test programs to determine the use of alcohol and drugs in the workplace. I personally would prefer not to use the blood test (except in the case of post accident cases - personal, vehicle and equipment) for no other reason than the intrusiveness of the use of needles on a person and the potential liability that could result. When a company determines to initiate a blood test program, it is advisable to use the following guidelines to insure employee's acceptance:

- a) Advise employee of the reasons for instituting the blood test program. Since alcohol produces the same effects as drugs on safe and efficient operations, a blood test program can be readily accepted by most individuals.
- b) Advise the employee that the program will not start immediately. The company should not start the program earlier than thirty days after the employees are notified. The employees should not be advised of the length of this grace period for obvious reasons.

Under no circumstances should blood samples be taken without the written consent of the employee. The program policy and guidelines should include the requirements for submitting to blood testing and the consequence of refusal. These policies should be explained to the employee who objects to signing a consent form.

The collection of blood samples should be accomplished only by a licensed physician or nurse and should only be collected in locations and areas meeting medically accepted standards for the collection and care of the blood sample.

As in urinalysis testing, the company must be able to show the "chain of custody" for the blood sample. This would include documentary evidence of custody, security of storage area and identification controls of samples.

Testing of the blood samples should be done by a medical laboratory rather than by company employees. The following positive results may occur and the company should have included in the blood test program guidelines how the test results will be used:

- a) Positive for Blood Alcohol
 - (1) Less than .10 NG/ML--Employee has recently ingested alcohol and is under the influence.
 - (2) Greater than .10 NG/ML--This blood alcohol level is evidence of intoxication in most states.

- b) Positive for T.H.C.--A positive result indicates that marijuana was ingested within four (4) hours of collection of the sample. This test has been used at times when urinalysis results have been positive for marijuana to indicate if the drug was used in the workplace.

4. Polygraph:

If utilized properly, the polygraph can be a valuable management and investigative tool. When an individual tells a lie or attempts deception, a variety of involuntary physiological changes take place--blood pressure, pulse rate, respiration and perspiration. This scientifically-calibrated instrument records some of these changes on paper so that they can be evaluated by a competent and qualified examiner.

In a pre-employment examination, questions could be resolved such as the extent of applicant's use of alcohol, marijuana and other drugs; does the applicant sell drugs; previous injuries or physical defects; and honesty. This will provide information in order to make sound employment decisions.

A polygraph could also be utilized after an employee is given a drug screen (urine) and there is a borderline confirmation shown. You could determine such things as did the employee ingest the drug while on the job, or did he report to work "under the influence."

There is a trend to increased admissibility of the polygraph in litigation. To my knowledge, no Federal or State court has ever ruled that a polygraph examination is an invasion of privacy or violates constitutional guarantees. Again it is a voluntary procedure and no employee should be forced to undergo a polygraph examination.

The polygraph was never intended to be a panacea, but is simply another tool available to management. Polygraph is not allowed in some states.

5. Employee Assistance:

Over the past decade, a considerable number of companies have established Employee Assistance Programs (EAPs). Earlier programs tended to address alcoholism rather than drug and job related problems. Today, all aspects of deteriorating job performance needs to be dealt with.

Employers are realizing large savings when their employees are treated for alcohol and drug problems. Medical costs and absenteeism go down while production goes up. For every dollar invested in EAP programs, it is reported that employers realize returns from \$2 to \$20. Another savings often overlooked is that treatment resulted in sharp reductions in the use of health care services by members of the treated employee's family.

Reported recovery rates for employees referred to EAPs range as high as ninety percent, and in most cases are around fifty percent. So, if EAPs work so well, why don't more companies have them? Only twelve percent of all U.S. workers have an EAP available to them at the workplace.

Reasons for initiating an EAP is corporate social responsibility, evidence of drinking or drug problems, indications of poor work performance, savings of money for the company and union pressure and support--unions are becoming increasingly active in promoting these programs.

On the other hand, the reasons for not starting an EAP program vary from a belief that the EAP will not really make a difference or save money to an assumption that the company did not have a substance abuse problem. Because of the widespread social use of alcohol and drugs, I feel that if you have people working for you, chances are you have a problem. The stigma associated with alcoholism and drug abuse discourages some companies from setting up a program. Also, some executives believe that alcoholism and drug addiction cannot be treated and that their obligation to the shareholders is to get rid of these employees instead of rehabilitating them. Another common barrier to establishing EAPs is the absence of a way to finance treatment. Testimony in 1982, before the Employment and Productivity Sub-Committee of the Senate Committee on Labor and Human Resources, revealed that insurance coverage could be obtained for a premium of less than a dollar a month for each covered individual--a very small investment for very big returns.

An effective program could be established by a company for very little cost using local community services as referral outlets for employees with drug and alcohol problems.

To have an effective program, of whatever magnitude, confidentiality must be observed at all times. The employee must not feel that there is a breach of this trust.

6. Undercover Investigators

Although the use of undercover investigators would not be a part of "established" company policy, this does serve as an effective tool for determining drug and alcohol usage in the workplace. Management is given information upon which to act.

Approximately twenty-five percent of the private detective agency business in the U.S. is derived from the use of undercover investigators by companies who want information as to drug activities in the workplace.

Conclusion

For those companies whose labor force is organized and who are contemplating implementing any or all of the above options, with the exception of undercover investigations, you would be well advised to remember the Union. If there is a union involved, some of these steps shouldn't be taken without union awareness and cooperation. In the absence of hard evidence of drug use or possession and before any firing, suspension or transfer actually is effected, the union should be told it is going to happen and be given the reason--not a diagnosis of drug use but of poor job performance together with the symptoms observed. Many companies prefer to involve the union after the policy is intact. There is merit in both approaches. Bargaining agreements may have to be amended.

Employee participation and acceptance of a company policy is very important in the success of said policy. In a drug/alcohol program and policy I have found it can effectively be introduced to the employees through posters, informational booklets on drug and alcohol awareness, training and an explanation of the policy and the dangers of drug usage in the workplace.

Companies must realize that dealing with drug problems involves risks and costs and that the risks generally are not avoidable, but can be minimized. By taking action, managers risk employee illwill, and perhaps, temporary misinterpretation by the public. But doing nothing is even more risky.

Drug abuse! Self abuse! Social abuse! There is no doubt about it--drugs and people are on a collision course. All mind altering drugs facilitate the withdrawal from reality, all are widely available--either legally or illegally. These drugs confuse judgment and undermine rationale. To tolerate them in any situation requiring a clear head and accuracy is to risk disaster. They must be controlled.

REFERENCES

The Employee Handbook on Drug and Alcohol Awareness;
Charles S. Pendleton; 1984.

Harvard Business Review; page 48;
Peter B. Bensinger; November-December 1982.

Syva Signal; page 8; October, 1983 edition.

American Psychologist; page 454; "American Productivity - The
Devastating Effect of Alcoholism and Drug Abuse"
Senator Dan Quayle; April, 1983.

U.S. News & World Report; page 85
"Getting Tough on Worker Abuse of Drugs, Alcohol;"
December 5, 1983.

International Association of Drilling Contractors;
Booklet on "How to Keep Drugs Off Your Rig;" 1984

Bureau of Business Practice, Inc.;
Report No. 1540--Employee Relations and Human Resources Bulletin;
March 21, 1983.

Charles S. Pendleton's Speech to International Association of
Drilling Contractors; May, 1978.

"Problems of Mass Urine Screening for Misused Drugs;"
John P. Morgan, M.D. - 1984;
Departments of Pharmacology and Medicine, Mt. Sinai School of
Medicine, New York.

